



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 6245976

Date: MAR. 23, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an attorney, seeks to classify the Beneficiary, a Chemistry, Manufacturing, and Controls (CMC) regulatory affairs researcher, as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that while the Beneficiary satisfied three of the ten initial evidentiary criteria, as required, the Petitioner did not establish her sustained national or international acclaim and demonstrate that she is among the small percentage at the very top of her field of endeavor.

On appeal, the Petitioner reasserts the claim that the Beneficiary has met the original contribution criterion. He further argues that the record establishes her sustained national acclaim and that her achievements have been recognized in her field.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, he must show that the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Beneficiary met the evidentiary criteria related to published material at 8 C.F.R. § 204.5(h)(3)(iii); judging at 8 C.F.R. § 204.5(h)(3)(iv); and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The Director further determined that the Beneficiary did not meet the criterion related to original contributions at 8 C.F.R. § 204.5(h)(3)(v).

The record contains a published article in *European Pharmaceutical Review* that is about the Beneficiary and related to her work. It also includes evidence sufficient to establish that *European Pharmaceutical Review* is a major trade publication. The Petitioner has demonstrated that the Beneficiary served as a peer reviewer for articles published in professional journals such as the *Journal of Probiotics & Health*, *International Journal of Biology*, and *Medical Sciences*. Finally, the record reflects that the Beneficiary has authored scholarly articles published in journals including the *Journal of Pharmacy Research* and the *African Journal of Food Science*. Accordingly, we agree with the Director that the Beneficiary meets three of the ten initial evidentiary criteria, as required.

On appeal, the Petitioner reasserts that the Beneficiary meets a fourth criterion related to original contributions. However, as he has established that she satisfies three other criteria, we need not address whether she meets a fourth, but we will consider the evidence submitted as part of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a beneficiary's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.¹ In this matter, we determine that the Petitioner has not shown her eligibility.

The Petitioner indicates that the Beneficiary graduated in 2008 and has been active in her field since this time. The record reflects that in 2011 the Beneficiary received her masters of science in biosciences from the [] University School of biosciences and technology and received a grant to pursue her research during this time from []. The Petitioner indicates that she was employed by [] as a research and development scientist and then as a senior scientist in international regulatory affairs, from 2011 through 2015. In 2016, she began work as the associate director of CMC and regulatory affairs at [] where she was employed when the instant petition was filed on her behalf.

As we note above, the Petitioner established that the Beneficiary met the criterion for published material under 8 C.F.R. § 204.5(h)(3)(iii). The Petitioner offers two articles about the Beneficiary and her work in clinical research and regulatory affairs published in *European Pharmaceutical Review* and *Clinical Trials Arena* but establishes that only one of these publications, *European Pharmaceutical Review*, is a major medium. Here, the Petitioner did not demonstrate that a single qualifying article in a major medium is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. See section 203(b)(1)(A) of the Act. In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Even considering the additional article, the Petitioner has not submitted evidence showing that the publication of two media articles about the Beneficiary reflects a level of press coverage represents recognition consistent with being among "that small percentage who [has] risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

¹ See also USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

The Petitioner argues that the frequency with which she has peer reviewed articles and the distinction of the scientists whose work she has reviewed are evidence that she is at the top of her field of endeavor. An evaluation of the significance of her experience, as evidenced by the frequency of her peer reviews, is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. See *Kazarian*, 596 F. 3d at 1121-22 (finding that a review of the significance of the evidence submitted is more appropriate in a final merits determination of whether the petitioner has met the requisite extraordinary ability). The record reflects that the Beneficiary has reviewed many manuscript and review articles for the *International Journal of Biology, Medical Science, Journal of Probiotics & Health, Tropical Journal of Applied Natural Sciences*. As evidence of the distinguished nature of the scientists' whose work she has reviewed, the Petitioner references an article she has reviewed titled, [REDACTED]

[REDACTED] authored by [REDACTED] and [REDACTED] and points to media coverage of [REDACTED] laboratory research." While the media coverage reflects that work carried out by [REDACTED] in the realm of food safety has been recognized, it does not reference the specific article reviewed by the Beneficiary, or otherwise acknowledge her as a reviewer of [REDACTED]'s work.

Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of her field. Although the record shows that the Beneficiary reviewed numerous manuscripts, it does not demonstrate how her reviews differentiate her from the field, such as evidence showing how her work compares in quantity and quality to that of her peers. Similarly, the evidence in the record does not show that she has received any acclaim or recognition for her efforts peer reviewing for [REDACTED] or any other scientist. Without this or other evidence differentiating her from those in her field, such as documentation showing that she has served in editorial positions for distinguished journals or publications or other relevant evidence, the Petitioner has not established that the Beneficiary's peer review experience places her among that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

With respect to the Beneficiary's authorship of scholarly articles, the record reflects that she published five papers in peer-reviewed journals and authored two book chapters, has two articles pending review, and has been invited to and delivered oral presentations at conferences.² The Petitioner also submits documentation establishing the peer review process and publication requirements for the journals in which the Beneficiary's articles appear. However, he does not provide evidence differentiating the Beneficiary's publication rate from those of others in her field, or otherwise establishing that it is reflective of one who is among the small percentage at the very top of her field of endeavor. See 8 C.F.R. § 204.5(h)(2). Moreover, the Petitioner does not submit evidence demonstrating that the Beneficiary has received national or international acclaim for her publications.

² These articles include her 2010 *Journal of Pharmacy Research* article titled [REDACTED] and 2010 *African Journal of Food Science* article, [REDACTED]. The Petitioner also includes her 2011 *International Journal of Research in Ayurveda & Pharmacy* articles "[REDACTED]" and "[REDACTED]" and her 2013 *Journal of Probiotic Health* article [REDACTED].

Beyond the three criteria that the Beneficiary has satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, these materials contribute to but do not establish an overall finding that the Beneficiary has sustained national or international acclaim and is among the small percentage at the top of her field.

As it relates to her research, the Petitioner submits articles, book chapters, and letters of recommendation, among other materials, discussing [redacted] bacteria” named [redacted] its potential health benefits, which the Beneficiary isolated.³

These publications establish that others have referenced the Beneficiary’s research in their own work.⁴

For example, the Petitioner provides an article, “[redacted]” in which the authors note, “[redacted] isolated from [redacted], was evaluated for [redacted] property...” and cite to the Beneficiary’s 2010 and 2011 article. An article in the *Asian Pacific Journal of Tropical Biomedicine*, written by a co-author of the Beneficiary’s 2010 and 2011 papers, cites to the Beneficiary’s research and notes, “[o]ur research group has previously isolated and identified” [redacted]

However, while these publications discuss the benefits of the isolated bacteria, they do not differentiate the Beneficiary or her role in isolating it from that of others in the field. The Beneficiary’s research is generally one among numerous articles referenced in these articles and books provided in the record. In the first article referenced above, the Beneficiary’s research papers are cited only once in the body of the article, and account for two of 40 papers listed in the references section. In the second paper, the Beneficiary’s 2010 paper is cited once in the body of the document and is one of 35 papers in the list of references. The Petitioner does not provide evidence demonstrating that these rates of citation are indicative of a high level of recognition in the field. The record therefore is insufficient to support a finding that the Beneficiary’s contributions have been recognized by the field in a manner consistent with being among “that small percentage who [has] risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

With respect to the letters of recommendation in the record, the authors also discuss the Beneficiary’s isolation of [redacted]⁵ In his letter, [redacted] staff scientist at [redacted] states, “[the Beneficiary’s] far-reaching work yielded the discovery of the novel [redacted] bacteria.” He notes that this novel strain was subsequently accepted into the MTCC, and explains MTCC’s criteria for accepting microbial strains, thus proving “her international acclaim in the field.” [redacted] manager of product development for [redacted] notes that the “[s]uperlative nature of this isolate gave itself to being accepted by the predominant microbial repository at IMTECH, India.” Neither [redacted] or [redacted] differentiate the acceptance of this microbe by MTCC or IMTECH from that of other microbes isolated by other researchers, nor does the record show how the acceptance of [redacted] demonstrates that the Beneficiary’s discovery is reflective of sustained national or international acclaim. Without this evidence, these letters are insufficient to

³ The record also contains [redacted]’s genetic sequence, its registration with the Microbial Type Culture Collection (MTCC), information about the MTCC.

⁴ We have reviewed all of the articles in the record but discuss only a sampling here.

⁵ While we discuss only a few letters here, we have reviewed all of the correspondence in the record.

show that the Beneficiary is among “that small percentage who [has] risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

With respect to the Beneficiary’s development of a new [redacted] the Petitioner indicates that it “would be of major significance in rural areas with limited access to refrigeration” and “opens the possibility of a [redacted] with an extended shelf life.” He does not point to evidence in the record demonstrating how the Beneficiary has garnered national or international acclaim from these prospective benefits. Accordingly, he has not shown that the Beneficiary has sustained national or international acclaim as a result of her development of this [redacted]

The Petitioner also points to the number of citations garnered by the Beneficiary’s scholarly articles as evidence of her achievements and of her “career of acclaimed work in the field.” The citation history or other evidence of the influence of these articles can also be an indicator to determine the impact and recognition that her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that her work has been recognized and that other researchers have been influenced by it. At the time of filing, the Petitioner offered evidence that the Beneficiary’s most-cited articles received 33 and 11 citations, respectively.⁶ While these citations, both individually and collectively, show that field has noticed her work, the Petitioner did not submit evidence differentiating the frequency of citation from that of others in the field or otherwise demonstrating that the Beneficiary’s citation rate is reflective of a sustained national or international acclaim, or of a “career of acclaimed work in the field.” *See* 8 C.F.R. § 204.5(h)(2), H.R. Rep. No. 101-723 at 59.

For the reasons discussed above, the Petitioner has not established the Beneficiary’s extraordinary ability under section 203(b)(1)(A)(i) of the Act. As such, we need not determine whether she is coming to “continue work in the area of extraordinary ability under section 203(b)(1)(a)(ii).

III. CONCLUSION

The Petitioner has established that the Beneficiary meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, he has not demonstrated her sustained national acclaim and that her achievements have been recognized through extensive documentation. The Petitioner therefore has not established the Beneficiary’s eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁶ The record contains an undated and untitled printout providing these values. The printout reflects that the remainder of her articles have received a total of 23 citations. The record also includes letter from [redacted], senior editor at the [redacted], discussing these book chapters and noting that the book “has a global circulation” and “is selling very well.” However, neither the untitled printout nor this correspondence indicates that the Beneficiary’s chapters have been cited by others.